

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

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| In the matter of the amendment of ARM) | NOTICE OF AMENDMENT AND |
| 17.24.201, 17.24.202, 17.24.203,) | REPEAL |
| 17.24.206, 17.24.207, 17.24.212,) | |
| 17.24.213, 17.24.214, 17.24.218,) | (RECLAMATION) |
| 17.24.219, 17.24.220, 17.24.221,) | |
| 17.24.222, 17.24.223, 17.24.224,) | |
| 17.24.225, and 17.24.226 and the repeal) | |
| of ARM 17.24.216 and 17.24.217) | |
| pertaining to rules and regulations) | |
| governing the Opencut Mining Act) | |

TO: All Concerned Persons

1. On November 12, 2015, the Board of Environmental Review published MAR Notice No. 17-376 regarding a notice of public hearing on the proposed amendment and repeal of the above-stated rules at page 1951, 2015 Montana Administrative Register, Issue Number 21.

2. The board has amended ARM 17.24.201, 17.24.202, 17.24.203, 17.24.206, 17.24.207, 17.24.212, 17.24.213, 17.24.214, 17.24.219, 17.24.222, 17.24.223, 17.24.224, 17.24.225, and 17.24.226 and repealed ARM 17.24.216 and 17.24.217 exactly as proposed. The board has amended ARM 17.24.218, 17.24.220, and 17.24.221 as proposed, but with the following changes, stricken matter interlined, new matter underlined:

17.24.218 PLAN OF OPERATION--(SITE CHARACTERIZATION, SITE PREPARATION, SOIL AND OVERBURDEN HANDLING, MINING, AND PROCESSING PLANS--) AND PERFORMANCE STANDARDS (1) The plan of operation must include the following:

(a) unless otherwise approved in writing by the department, a markers section that includes a statement that the operator clearly marked on the ground all required boundaries and permitted access roads to be improved or constructed and will maintain the markings as required by this rule. Boundary and road markers must be placed so that no less than two consecutive markers are readily visible in any direction from any point on a line. The following requirements apply to marking boundaries and permitted access roads to be improved or constructed:

(i) through (c)(i)(D) remain as proposed.

(d) a soil and overburden handling section that includes a statement that the operator shall:

(i) through (vi) remain as proposed.

(vii) use best management practices to prevent erosion, commingling, contamination, compaction, and unnecessary disturbance of soil and overburden stockpiles including, but not limited to, at the first seasonal opportunity, shape and seed, with approved perennial species, the soil and overburden stockpiles that are

capable of sustaining plant growth, and that remain in place for more than two years and maintain the accessibility of all overburden and soil stockpiles in the permit area prior to reclamation in accordance with the plan of operation;

(e) through (3) remain as proposed.

17.24.220 PLAN OF OPERATION--RECLAMATION BOND CALCULATION

(1) A proposed reclamation bond calculation must be submitted as part of the plan of operation on a form provided by the department or in another format approved by the department in writing. The bond amount must be based on a reasonable estimate of the cost for the department to procure the services of a third-party contractor to reclaim, in accordance with this subchapter and the plan of operation, the anticipated maximum disturbance during the life of the bonded opencut operation, including equipment mobilization, contractor profit, and overhead costs. The department shall review the proposed bond calculation and make a final determination.

(2) through (4) remain as proposed.

17.24.221 PLAN OF OPERATION--MAPS (1) and (2) remain as proposed.

(3) Site maps must show and identify the following existing and proposed features as applicable:

(a) through (w) remain as proposed.

(x) the data point and map identification number for each pair of coordinates the operator provided on the boundary coordinate table that is required by (8); and

(y) through (7) remain as proposed.

(8) Marker, road, and boundary locations that must be marked in the field under ARM 17.24.218(1)(a) and markers, roads, and boundaries located in hayland or cropland must be provided on a boundary coordinate table form or through another method approved by the department.

3. The following comments were received and appear with the board's responses:

COMMENT NO. 1: The proposed amendments to ARM 17.24.221 should provide flexibility in the means of submitting coordinates for permit and boundary and other information other than a boundary coordinate table.

RESPONSE: The board agrees with the comment and has modified the rule in (3)(x) and added (8).

COMMENT NO. 2: ARM 17.24.218(1)(a) should provide flexibility in the means of marking permit and other boundaries in the field.

RESPONSE: The board agrees with the comment and has so modified the rule.

COMMENT NO. 3: ARM 17.24.220(1) should provide flexibility in the means of calculating the amount of the reclamation bond.

RESPONSE: The board agrees with the comment and has amended the rule accordingly.

COMMENT NO. 4: The proposed amendments should provide for submittal of maps in a size and scale appropriate to the project area.

RESPONSE: The board acknowledges the commenter's concern and responds that the change suggested by the commenter is already included in the proposed rules and is applicable to all operators. See proposed amendments to ARM 17.24.221(1).

COMMENT NO. 5: The proposed amendments should allow the department to consider steeper slopes for post mining land uses based on demonstrated success.

RESPONSE: The board acknowledges the added flexibility that the suggested change would afford operators, but declines to adopt the suggested change. The proposed amendments provide that an applicant may propose reclamation to a slope that is in a stable condition and steeper than 5:1 for hayland and cropland, 4:1 for sandy surfaces, and 3:1 for other sites and surfaces that are appropriate to the designated postmine as long as the steeper slope is based on the design of a licensed professional engineer. See ARM 17.24.219(1)(c)(i), (vii). The board is concerned that a historical consideration such as "demonstrated success" is an inadequate substitute for engineering analysis to protect the public from unstable slopes.

COMMENT NO. 6: The proposed amendments should allow for use of materials other than soils to establish the final grade for reclamation if the material used for final grade was present at the surface before mining began.

RESPONSE: The board acknowledges the concern articulated in the comment. The board believes that the proposed amendments to the rules already provide the flexibility that the commenter seeks. See ARM 17.24.219(1)(c)(vi), which provides for substitution of overburden for soil in the event that soil is unavailable.

COMMENT NO. 7: The proposed amendments should allow an operator to retain land that has been approved for Phase II bond release in the approved permit area as a non-bonded area.

RESPONSE: The board acknowledges the added flexibility that the suggested change would afford operators, but declines to adopt the suggested change. The Opencut Mining Act provides that release of the bond coincides with release of the operator from further obligation regarding any affected land. See 82-4-433(7), MCA. Also, adopting the commenter's suggested change has the potential of confusing the due process rights of the landowner and other interested parties to administrative review of a decision on an application to release a reclamation bond. See 82-4-427(3), MCA.

COMMENT NO. 8: ARM 17.24.218(1)(d)(vii) should be amended to provide an exception to the seeding requirement for overburden stockpile that are not capable of sustaining plant growth.

RESPONSE: The board agrees with the comment and has amended the rule accordingly.

COMMENT NO. 9: The title of ARM 17.24.207 should be amended as follows: "ADDITIONAL REQUIREMENTS AND EXCEPTIONS FOR BENTONITE MINES."

RESPONSE: The comment proposes an amendment to the title of ARM 17.24.207. Because the board is not amending ARM 17.24.207 in this adoption notice, revision of the title of the rule is not necessary.

4. No other comments or testimony were received.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North
JOHN F. NORTH
Rule Reviewer

By: /s/ Joan Miles
JOAN MILES
Chairman

Certified to the Secretary of State, March 7, 2016.